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Lawmakers Dealing on Consumer Protection

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With it increasingly likely that a bipartisan reform bill in the Senate would not include an independent, powerful Consumer Financial Protection Agency, lawmakers are exploring alternatives.

Senate Banking Committee Chairman Chris Dodd and the panel's top Republican, Richard Shelby, though far from a deal, are considering creating a consumer-protection division within the federal banking agency envisioned by the legislation.

That would be a long way from the Obama administration's plan for a separate, independent agency with blanket consumer protection rule-writing and enforcement power over financial providers.

"I'm confident that the administration proposal won't be what we end up with," said Douglas Elliot, a fellow at the Brookings Institution. "There will be some significant compromise. The bankers, in particular the community bankers, have made a lot of headway in pushing against the Consumer Financial Protection Agency."

Several options are being mulled, but the idea gaining the most attention is for a distinct division inside the broader supervisor, according to Senate aides and lobbyists on both sides of the issue.

"What Shelby has said very clearly is that he will only accept some form of consumer department in a bank regulator," said Travis Plunkett, the legislative director for the Consumer Federation of America. "And could you beef that up if you give them enhanced authority, an independent funding stream, Senate confirmation, equal status or some autonomy? I think that is the realm of things they are talking about."

Sources pointed to the way the Office of the Comptroller of the Currency works with the Treasury Department. Though it is part of the Treasury, the OCC conducts its operations freely and is funded by assessments on the banks it regulates.

[Under the pending legislation, the OCC and the Office of Thrift Supervision would be merged to create a Financial Institutions Regulatory Administration.]

It is unclear whether such a compromise would satisfy the champions of an independent agency, including Dodd.

"You could call it a consumer division instead of the CFPA," Plunkett said, "but it has to have independent funding; it has to have autonomy to make decisions; it can't report to a prudential regulator, [and] it has to have a presidential appointee."

Ed Mierzwinski, the consumer program director at the U.S. Public Interest Research Group, said the idea of a consumer division sounds too much like the status quo.

"The idea of making the Consumer Financial Protection Agency some part subservient to the OCC is just keeping the system we have today," he said. "The consumer regulator must be independent. The OCC is not independent of its dependence on the Treasury or of the banks. Anything that is like an OCC model is doomed to failure."

Mike Calhoun, the president of the Center for Responsible Lending, agreed. "We are skeptical that there is any structure other than a free-standing agency where the consumer regulator is not pressured by the same interests that produced the crisis that we are still trying to get out of."

Speaking for the industry, the president of the American Bankers Association, Ed Yingling, said a consumer division could be acceptable.

"The idea of a division within an existing regulator could make sense," he said. "It is superior to having an independent consumer regulator that would be in constant conflict, with the bank caught in the middle."

Yingling declined to say whether the industry would oppose letting such a division be independent and led by a presidential appointee.

"That's up to the members of Congress. I am not negotiating with the consumer groups," he said.

Beyond the consumer division concept, alternatives to an independent agency remain on the table.

One idea, from Rep. Walt Minnick, D-Idaho, which won support from some Democrats but ultimately failed in the House, would have let a council of regulators jointly write and enforce consumer protections, giving them equal weight with safety and soundness regulations.

Another idea is to empower a new agency to write uniform consumer protections but let it enforce them only against nonbanks while bank regulators would enforce the standards against banks.

This approach has been advocated by Ellen Seidman, a senior research fellow at the New America Foundation and a former OTS director.

"It is really important that we have an independent entity doing the rule-writing," she said. "There is a whole world that is getting bigger right now ... of players who provide consumer financial services products who are not banks and are not regulated by bank regulatory agencies."

Because consumer protection is one of the most significant ideological differences between Democrats and Republicans on regulatory reform, it is likely to be one of the last components decided on.

Still, plenty of signs indicate that the consumer agency, as proposed, lacks enough support to be enacted.

The reform bill passed by the House in December narrowed the proposed agency's scope by carving out most banks and credit unions from being subject to its enforcement. A related proposal to let the states impose even stricter standards against national banks was largely scaled back.

In the Senate, Republicans are said to be unanimous in their opposition to separating consumer protection enforcement from safety and soundness; they have drawn a line in the sand over creating a new federal agency.

Moderate Democrats have suggested focusing enforcement efforts on nonbanks and cited concerns about unduly burdening community banks.

At the same time, Dodd, an early supporter of the consumer agency, has opened the door to compromise and is intent on passing a bipartisan bill before he retires at yearend.

Also, after the health-care debate, Democratic leaders and the administration want to avoid an ugly partisan fight on the floor over financial reform, sources said, because securing a filibuster-proof majority of 60 votes from Democrats could be a messy struggle.

Though much remains uncertain, said Richard Hunt, the president and CEO of the Consumer Bankers Association, "what we do know is that the CFPA is not likely to survive the Senate."

Mark Calabria, the director of financial regulation studies at the **Cato Institute** and a former Shelby aide, predicted that Dodd will eventually concede he lacks the votes to create the powerful agency he proposed.

"His own Democrats are going to walk away," he said. "Dodd doesn't have much negotiating power at this point."

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